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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

MARTIR, LILYBETT

ART UNIT

PAPER NUMBER

2855

DATE MAILED: 04/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/929,111

Applicant(s)

POWELL, BADEN MICHAEL

Examiner

Lilybett Martir

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-15 is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Crews, Jr. (Pat. 4,718,281) in view of Krainski, Jr. (Pat. 4,332,175).

- With respect to claim 1, Crews, Jr. teaches the utilization of a test part as in element 12 having clamp portions 18 and 23 located at would be the clamped portions of the part 12 each having a load cell as in elements 17 and 22, clamping the test part as noted in Figure 1 and collecting data from the load cells (Col. 3, lines 30-31). Crews, Jr. lacks the use of a recording device to record data from said load cells. Krainski, Jr. teaches the utilization of recording means combined with load cells so that the load cell output goes to said recording means (Col. 3, lines 35-37). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the material testing means of Crews, Jr. utilizing the teachings of Krainski et al. by providing it with recording means to record the load cell's data to save it for future comparison and evaluation of said data, therefore making the device more reliable and versatile.

3. Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crews Jr. (Pat. 4,718,281) in view of Krainski, Jr. (Pat. 4,332,175) and further in view of Shelor (Pat. 3,661,099).

- With respect to claim 2, Crews Jr. teaches the utilization of at least one clamp portion as in elements 18 and 23, and a load cell in every clamp portion as in elements 17 and 22. Crews Jr. fails to disclose said configuration on a test pallet and an on board data acquisition collector. Krainski, Jr. teaches the utilization of recording means to record load cell data and therefore being capable of recording said data by utilizing said means (Col. 3, lines 35-37). Shelor teaches the utilization and loading for the purpose of testing of a pallet deck as shown by elements 1,2 and F↓ in Figures 1 and 4 (Col. 3, lines 37-40). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the teachings of Crews, Jr. utilizing the teachings of Krainski Jr. by providing his device with recording means to record the load cell's data to save it for future comparison and evaluation of said data therefore making the device more reliable and versatile. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the teachings of Crews, Jr. using the teachings of Shelor by utilizing a test pallet instead of a simple specimen

to provide for the testing of a different elements and measuring forces exerted on them therefore making said device versatile.

- With respect to claim 3, Krainski teaches the utilization of a code or signal to proceed with the application of a desired load which suggests the utilization of a similar signal to stop the loading (Col. 2, lines 64-68).

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Crews Jr. in view of Krainski, Jr. and Shelor as applied to claim 2 above, and further in view of McClure et al. (Pat. 5,219,264).

- With respect to claim 4, Crews Jr. lacks the utilization of a proximity switch. McClure et al. teaches the utilization of proximity detectors as in elements 10 in combination with a clamping assembly as in elements 6. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the teachings of Crews, Jr. using the teachings of Shelor by utilizing proximity switches to detect the presence of the specimen, therefore making said device more versatile and reliable.

5. Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crews Jr. in view of Krainski, Jr. and Shelor as applied to claim 2 above, and further in view of Piety et al. (Pat. 6,078,874).

- With respect to claim 5, Crews Jr. lacks the utilization of a case enclosing a data acquisition collector. Piety et al. teaches the utilization of a case enclosing an on-board data acquisition collector as in element HPC (Col.

2, lines 47-49). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the teachings of Crews, Jr. using the teachings of Piety et al. to prevent damages to a data-handling device that may be caused by environmental hazards leading to malfunction and therefore make his device more durable.

- With respect to claim 6, Crews Jr. lacks the utilization of the data acquisition device to download data in an electronic readable format. Piety et al. teaches the utilization of a data acquisition device to store It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the teachings of Crews, Jr. using the teachings of Piety et al. by providing his device with means for storing and downloading functions to save and protect data to save it for future comparison and evaluation of said data therefore making the device more reliable and versatile.

Allowable Subject Matter

6. Claims 7-15 are allowed.
7. The following is a statement of reasons for the indication of allowable subject matter: Applicant's method steps for monitoring clamp loads on a production test pallet are neither disclosed nor suggested in any of the available prior art.

Claim Objections

8. Claim 1 is objected to because of the following informalities: in the preamble of said claim, the recitation of "to clamp clamp" seems to be redundant, the examiner

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suggests the insertion of the term "the" between the words clamp in order to clarify the scope of what is intended to be recited by the applicant. Appropriate correction is required.

Response to Arguments

9. Applicant's arguments filed on January 29, 2003 have been fully revised and are not persuasive. Applicant's failure to provide a clear and concise description on how a pallet is to be structurally configured provides for the examiner to deduce that any specimen can represent a pallet. Claims 1-6 fail to provide such description. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

11. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lilybett Martir whose telephone number is (703)305-6900. The examiner can normally be reached on 9:00 AM to 5:30 PM.

13. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on (703)305-4816. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3432 for regular communications and (703)305-3432 for After Final communications.


14. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0956.



Lilybett Martir
Examiner
Art Unit 2855



April 4, 2003



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